IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

LA.App..No. 492 of 2004() & CROSS OBJECTION NO.131/04

LAR.7/2001 of PRL.SUB COURT, KOZHIKODE
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APPELLANT: 2ND RESPONDENT:

THE PROJECT OFFICER (OECF)
KERALA WATER AUTHORITY, KOZHIKODE.

BY ADV. SRI.M.V.MATHAI MUTHIRENTHY, SC, KWA
SRI.SAJAN MANNALI, SC, KWA

RESPONDENTS: CLAIMANTS & 1ST RESPONDENT:
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1. RARAN S/O. IMBICHI KADUNGAN
KAYANDA MUKKIL, KIZHAKKOTH POST.

2. KALLIANI W/O. IMBICHI KADUNGAN, DO. DO.

3. THE SPECIAL TAHSILDAR (LA),
OECF, KERALA WATER AUTHORITY,
KOZHIKODE.

BY ADV. SRI.THOMAS ANTONY
GOVERNMENT PLEADER

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 30/10/2007, ALONG WITH LAA NO. 783 OF 2004 & CONNECTED CASES, and CO NO. 131 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No. 492 of 2004 & Cross Objection 131 of 2004,
LAA Nos.534, 536, 567 & Cross Objection 136 of 2004,
LAA Nos.568 & 783 of 2004 and

476 & 728 of 2005

Dated 30th October, 2007.

J U D G M E N T

Kurian Joseph, J.

These are appeals arising out of the common judgment in LAR No.2/2001 and connected cases on the file of the Sub Court, Kozhikode. The acquisition is for the purpose of laying pipe line and construction of water tank at Payimbra. Section 4(1) notification is issued on 20.6.1998. The Land Acquisition Officer fixed the land value at the rate of Rs.2,321/- per cent. The reference court fixed the land value at Rs.5,000/- per cent. In the nature of the order we propose to pass, it is not necessary to refer extensively to the various contentions taken by the parties, since on one submission made by the learned counsel appearing for the claimants/cross objectors, we propose to remit the matters to the reference court. That contention is that Exts.A1 and A2 properties lying at a lower level compared to the acquired land bear much higher land value. It is submitted that one item is paddy land whereas admittedly, the claimants'

properties are garden lands, though there is a dispute originally before the reference court that some items are to be classified as dry lands. But the reference court, with reference to the records, has rightly held that the lands lie as a block and they are to be treated as garden lands. It is seen that the reference court declined to fix the land value on the basis of Exts.A1 and A2, for the reason that the Advocate Commissioner did not inspect the basic land. According to the learned Government Pleader and the learned Standing Counsel, the basic land is in a more advantageous position than the acquired land. That is stoutly disputed by the claimants. Learned counsel appearing for the claimants prays that they may be granted a fresh opportunity to have the properties properly inspected with regard to the similarity and comparability of the basic land with Exts.A1 and A2 properties, and also the acquired property. Therefore, we set aside the judgment and decree in these cases and remit the references to the court below with a further direction to the said court to permit the claimants to take out a commission for the limited purpose referred to above. The parties shall appear before the reference court on 3.12.2007 and thereafter, the

references shall be disposed of within another three months. In case the reference court is not inclined to consider Exts.A1 and A2 documents for the purpose of fixation of land value, the value fixed by the reference court at Rs.5,000/- per cent will stand, since according to us, the fixation of land value at Rs.5,000/- is based on materials available on record and on proper appreciation of the entire facts and circumstances of the case. The fixation is made mainly with reference to the basic document, Ext.B1 which is executed on 15.1.1996. The date of effect of Section 4(1) notification is 20.6.1998, i.e., after 2½ years. Ext.B1 property is valued at Rs.4,641/- per cent. In view of the potential for development in the area, the reference court granted nominal enhancement at the rate of Rs.390/- per cent, in view of the fact that Section 4(1) notification in this case was issued after 2½ years of execution of Ext.B1 document. The potential for development is also supported by Ext.C1 commission report. In that view of the matter, we do not find any merit in the contention of the learned Government Pleader that the fixation of the value at the rate of Rs.5,000/- per cent is excessive.

In view of the remand as above, the requisitioning authority and the cross objectors shall be entitled to refund of the court fee.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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L.A.A.No. 492 of 2004 & Cross Objection 131 of 2004,
LAA Nos.534, 536, 567 & Cross Objection 136 of 2004,
LAA Nos.568 & 783 of 2004 and

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